

ORDINANCE NO. 2013-12

**AN ORDINANCE OF THE CITY COUNCIL OF THE
CITY OF NEWPORT BEACH, CALIFORNIA,
REPEALING ORDINANCE NO. 95-50 AND
ORDINANCE NO. 97-37 AND DISESTABLISHING
THE MARINE AVENUE BUSINESS
IMPROVEMENT DISTRICT**

WHEREAS, the Parking and Business Improvement Area Law of 1989 (California Streets and Highways Code Sections 36500 *et seq.*) ("Act") authorizes cities to establish parking and business improvement areas for the purpose of imposing assessments on businesses for certain activities;

WHEREAS, on October 19, 1995, the City Council of the City of Newport Beach ("City") adopted Ordinance No. 95-50 establishing the Marine Avenue Business Improvement District ("BID");

WHEREAS, on January 26, 1998, the City Council of the City adopted Ordinance No. 97-37 that modified the basis for levying assessments in the BID;

WHEREAS, on January 17, 2013, the BID's Advisory Board voted to recommend that the City Council disestablish the BID in order to allow the businesses within the BID to form a merchant association independent of the City;

WHEREAS, on April 23, 2013, the City Council of the City adopted Resolution No. 2013-38 ("Resolution") declaring its intention to disestablish the BID and set a public hearing for May 14, 2013 at 7:00 p.m., or as soon thereafter as the matter may be heard, in the City Council Chambers located at 100 Civic Center Drive, Newport Beach, California, pursuant to California Streets and Highways Code Section 36550;

WHEREAS, in accordance with California Streets and Highways Code Section 36523(a), the City Clerk caused a complete copy of the Resolution to be published in a newspaper of general circulation in the City;

WHEREAS, in accordance with California Streets and Highways Code Section 36523(b), the City Clerk caused a complete copy of the Resolution to be mailed by first-class mail to each business owner assessed within the BID, within seven (7) days following the adoption of the Resolution; and

WHEREAS, on May 14, 2013, a public hearing was held in the City Council Chambers located at 100 Civic Center Drive, Newport Beach, California, where evidence, both written and oral, was presented to, and considered by, the City Council during this public hearing.

NOW THEREFORE, the City Council of the City of Newport Beach ordains as follows:

Section 1: Ordinance No. 95-50 and Ordinance No. 97-37 are hereby repealed in their entirety. In addition, the City Council repeals all ordinances and resolutions, or portions thereof, which relate to the BID.

Section 2: Pursuant to California Streets and Highways Code Section 36550, the City Council hereby disestablishes the Marine Avenue Business Improvement District.

Section 3: In accordance with California Streets and Highways Code Section 36551, upon the effective date of this ordinance, any remaining revenues derived from the levy of assessments, if any, or any revenues derived from the sale of assets acquired with the revenues, if any, shall be refunded to the owners of the businesses operating within the BID that are current in their annual assessment by applying the same method and basis that was used to calculate the assessment levied this fiscal year.

Section 4: The recitals provided in this ordinance are true and correct and are incorporated into the substantive portion of this ordinance.

Section 5: If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity or constitutionality of the remaining portions of this ordinance. The City Council hereby declares that it would have passed this ordinance and each section, subsection, clause or phrase hereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses and phrases be declared unconstitutional.

Section 6: The City Council finds the approval of this ordinance is not subject to the California Environmental Quality Act ("CEQA") pursuant to Section 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it has no potential to have a significant effect on the environment.

Section 7: The Mayor shall sign and the City Clerk shall attest to the passage of this ordinance. The City Clerk shall cause the ordinance, or a summary thereof, to be published pursuant to Charter Section 414, and it shall be effective on June 30, 2013.

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This ordinance was introduced at a regular meeting of the City Council of the City of Newport Beach held on the 14th day of May, 2013, and adopted on the 28th day of May, 2013, by the following vote, to-wit:

AYES, COUNCILMEMBERS Gardner, Petros, Selich,

Henn, Daigle, Mayor Curry


NOES, COUNCILMEMBERS None

ABSENT COUNCILMEMBERS Hill

MAYOR 

KEITH D. CURRY

ATTEST:



LEILANI I. BROWN, CITY CLERK



APPROVED AS TO FORM:
CITY ATTORNEY'S OFFICE



AARON C. HARP, CITY ATTORNEY


STATE OF CALIFORNIA }
COUNTY OF ORANGE } ss.
CITY OF NEWPORT BEACH }

I, Leilani I. Brown, City Clerk of the City of Newport Beach, California, do hereby certify that the whole number of members of the City Council is seven; that the foregoing ordinance, being Ordinance No. 2013-12 was duly and regularly introduced on the 14th day of May, 2013, and adopted by the City Council of said City at a regular meeting of said Council, duly and regularly held on the 28th day of May, 2013, and that the same was so passed and adopted by the following vote, to wit:

Ayes: Gardner, Petros, Selich, Henn, Daigle, Mayor Curry
Nays: None
Absent: Hill

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the official seal of said City this 29th day of May, 2013.





City Clerk
City of Newport Beach, California
(Seal)

CERTIFICATE OF PUBLICATION

STATE OF CALIFORNIA }
COUNTY OF ORANGE } ss.
CITY OF NEWPORT BEACH }

I, LEILANI I. BROWN, City Clerk of the City of Newport Beach, California, do hereby certify that Ordinance No. 2013-12 has been duly and regularly published according to law and the order of the City Council of said City and that same was so published in *The Daily Pilot*, a daily newspaper of general circulation on the following dates:

Introduced Ordinance: May 18, 2013
Adopted Ordinance: June 1, 2013

In witness whereof, I have hereunto subscribed my name this _____ day of _____ 2013.

City Clerk
City of Newport Beach, California
(Seal)